The use of the term "profert" in this connection is peculiar and extremely rare, as it is used ordinarily only in connection with written instruments. However, there is no good reason why it should be confined to any particular class of objects. Although the question involved in this case has not often arisen, still it is not a new one. The present case follows the decision in *Linton* v. *State*, 88 Ala. 216, in which almost precisely the same facts were involved. In other cases where a person's color was material, the jury have been allowed to determine, by inspection, whether the person in question was a negro or a white person. *Garvin* v. *State*, 52 Miss. 207; *Warlick* v. *White*, 76 N. C. 175; *Gentry* v. *McMinnis*, 3 Dana (Ky.) 382; *Hook* v. *Pagee*, 2 Munf. 379. There is no good reason, apparently, why such evidence should be excluded from the jury.

GUARANTY—SURETY FOR TENANT—ASSIGNMENT OF LEASE—LIABILITY OF GUARANTOR.—Plaintiffs leased to one H. certain property for ten years, the rent payable monthly. There was to be no assignment "except * * * to a corporation consisting mainly of himself (H.), and his associates in business." Defendant's testator, at the time of making the lease, agreed by a writing under the same cover with the plaintiffs, "their successors and assigns, that if default * * * should be made by the said H. on the payment of the rent, or the performance of any covenant," to pay the said rent. The lease was assigned before the beginning of the term by H. to a corporation as provided, and default made by the corporation. In an action on the guaranty, *held*, that the guarantor was not liable for the default of the corporation. *Smith et al.* v. *Ottman* (1908), 111 N. Y. Supp. 912.

The court divides three to two on the question involved in this case, the disagreement being due to an insistence by the minority that the case of *Morgan* v. *Smith*, 70 N. Y. 537, is in point and decisive. It is claimed that *Morgan* v. *Smith* holds that when there is a provision in the lease for assignment, the lease and guaranty must be read together and the guarantor held to assent to the assignment. The facts in that case, however, were that the original lessee still remained liable by express contract for the rent after the assignment, and the case held the guarantor, despite the assignment which was authorized in the lease, liable, not for the default of the assignee, but for that of the original lessee. That the mere assignment, when the assignor still remains liable for the rent, does not discharge his guarantor, is well settled. *Smith* v. *Morgan*, supra; *Grommes* v. *St. Paul Trust Co.*, 147 Ill. 634; *Oswald* v. *Fratenburgh*, 36 Minn. 270. And the mere consent to the assignment and the acceptance of rent from the assignee will not operate as a surrender, discharging the assignor from liability on his covenants. 24 Cyc., p. 1372; *Ranger* v. *Bacon*, 3 Misc. (N. Y.) 95. The majority point out that *Morgan* v. *Smith*, supra, has no application to the case under consideration. It is a far different thing to hold the guarantor liable for the default of the assignor after an assignment than to hold him liable for the default of the assignee. Beyond question H., in the principal case, was released from liability for rent by the assignment.

The lessor looked to the assignee for the payment of the rent and recognized him as the tenant. That operated as a surrender. 24 Cyc., p. 1371; *Page* v. *Ellsworth,* 44 Barb. (N. Y.) 636. And since the guaranty was expressly limited to the default of H., it would seem that there was no room for dissent from the conclusion of the majority that no construction of the lease and guaranty together could extend the liability of the guarantor to the default of the assignee.

Husband and Wife—Contracts Between—Validity.—A state statute removed every disability that coverture had formerly imposed upon married women, so far as their separate property and earnings were concerned. A husband promised his wife a certain cooking stove if she would accompany his threshing outfit and do the cooking. In an action of replevin by the wife for the stove it was contended by defendant that as the husband was entitled to the domestic services of his wife, a contract to reward her for such services was void as being contrary to public policy. *Held,* a wife may contract for services to be performed by her for her husband in matters apart from her domestic duties as if she were a *feme sole. Tuttle* v. *Shutts* (1908), — Colo. —, 96 Pac. 260.

In behalf of the defendant it was contended that the husband was entitled to the services of the wife so far as the same relate to domestic affairs, and that under the testimony as presented the husband was entitled to such services. The court observes, without deciding this particular question, that the testimony offered in the case clearly discloses that the services performed by the wife for her husband were not of a domestic nature, but were services to be performed away from home. The statute involved in this decision is broader in its terms than those of many states where similar questions have been raised. In *Whitaker* v. *Whitaker,* 52 N. Y. 368, the right of a wife to recover against the husband's estate the amount of a promissory note given to her by him for performing outdoor services was denied. A wife cannot claim compensation for working in her husband's business, although she proves an express agreement to that effect. *In re Reuter Estate,* 5 Dem. Surr. 162. In *Coleman* v. *Burr,* 93 N. Y. 17, the wife had taken care of the paralytic mother of her husband upon his explicit promise to pay therefor; nevertheless she was denied the right of recovery. A wife cannot maintain an action against her husband for services as cook in his logging operations, and when in such action the fact of coverture appears the action must be dismissed. *Copp* v. *Copp et al,* — Me. —, 68 Atl. 458. An act enabling a married woman to contract in the same manner as if she were a *feme sole* does not enable her to contract with her husband. *Kniel* v. *Egleston,* 140 Mass. 202, 4 N. E. 573. The disability which coverture formerly imposed as to the right a wife had to contract with her husband has not been taken away by the married woman's acts. *Savage* v. *O'Neil,* 42 Barb. 374; *McCorkle* v. *Goldsmith,* 60 Mo. App. 475. As to the right of a wife contracting with her husband as to her separate estate, see *Benedict* v. *Driggs,* 34 Hun 94; *Fairbanks* v. *Mothersell,* 60 Barb.